

Gary L. Cooper (ISB No. 1814)
Ron Kerl (ISB No. 1768)
COOPER & LARSEN, CHTD.
151 North 3rd Avenue, Suite 210
P.O. Box 4229
Pocatello, Idaho 83205-4229
Telephone (208) 235-1145
Facsimile (208) 235-1182

Counsel for Pocatello Dental Group, P.C.

U.S. COURTS
DISTRICT OF IDAHO
CLERK, IDAHO

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,)
an Idaho professional corporation,)
Plaintiff,)

vs.)

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
Defendant.)

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
Counterclaimant,)

vs.)

POCATELLO DENTAL GROUP, P.C., an)
Idaho professional corporation; DWIGHT G.)
ROMRIELL, individually; LARRY R.)
MISNER, JR., individually; PORTER)
SUTTON, individually; ERNEST SUTTON,)
individually; GREGORY ROMRIELL,)
individually; ERROL ORMOND, individually;)
and ARNOLD GOODLIFFE, individually;)
Counterdefendants.)

Case No. CIV 03-450-E-BLW

**REPLY MEMORANDUM IN
SUPPORT OF PLAINTIFF'S
MOTION TO STRIKE
DEFENDANT'S AMENDED AND
SUPPLEMENTAL
COUNTERCLAIMS DATED
JUNE 2, 2004**

COMES NOW the Plaintiff, by and through its attorneys of record, and offers this reply memorandum in support of its Motion to Strike the Defendant InterDent Service Corporation's Supplemental Counterclaim and Third Party Complaint dated June 2, 2004.

Defendant InterDent admits in its response (Docket No. 128) that the June 2, 2004 filing contains three entirely *new* claims for affirmative relief (Counterclaims Nos. 6, 7, and 8) and that it has *amended* three other claims for affirmative relief (Counterclaims Nos. 9, 10, and 11). Its sole justification for the filing is that this Court granted Plaintiff the right to file its Amended Complaint on May 17, 2001. Plaintiff acknowledges the Defendant InterDent's right to file a new *answer* raising *affirmative defenses* to the claims set out in the Plaintiff's amended complaint. InterDent's amended answer is not the basis of Plaintiff's motion to strike.

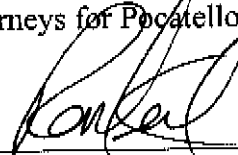
The filing of the Plaintiff's amended complaint, and the Defendant InterDent's right to file an amended answer to that amended complaint *does not also* give Defendant InterDent the right to *amend its counterclaim and third party complaint seeking new claims for affirmative relief* against the plaintiff, counter-defendants and third party defendants and nor did that amended complaint give InterDent the right to *alter or amend existing claims for affirmative relief* against the plaintiff, counter-defendants and third party defendants.

The unilateral amendment of InterDent's claims for affirmative relief are improper based upon the parties' litigation plan requiring the amendment of pleadings on or before May 15, 2004, and this Court's scheduling order adopting the parties' agreement that the amendment of pleadings needed to be completed by May 15, 2004. InterDent's June 2, 2004 amendments, therefore, are late and in violation of the parties stipulation and this Court's Order.

Further, the amendment of the Defendant's counterclaim and third party complaint, even in the absence of the litigation plan and Scheduling Order, required leave of Court pursuant to F.R.C.P. 15. InterDent has not so moved the court and it has not been granted leave to file its new and amended claims. The amended and supplemental Counter-claims and Third Party Complaint, to the extent new and amended claims are being asserted by InterDent, should be stricken by the Court.

Dated this 8 day of July, 2004.

COOPER & LARSEN, CHTD.
Attorneys for Pocatello Dental Group, P.C.



Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 8 day of July, 2004, I served a true and correct copy of the

foregoing document as follows:

Erik F. Stidham
G. Rey Reinhardt
STOEL RIVES LLP
101 S. Capitol Blvd., Ste.1900
Boise, ID 83702-5958

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Scott J. Kaplan
STOEL RIVES LLP
900 SW Fifth Ave. Ste. 2600
Portland, OR 97204-1268

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Lowell N. Hawkes
1322 East Center
Pocatello, ID 83201

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Richard A. Hearn
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.
P.O. Box 1391
Pocatello, ID 83204

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

By: _____

Ron Kerl